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Supreme Court, U.S.
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No. 00-1768

In The

Supreme Court of the United States

SUSAN LUDWIG,

Petitioner,

v.

NORTHWEST AIRLINES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

SUPPLEMENTAL REPLY TO NORTHWEST AIRLINE'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

The overriding national importance of airline safety concerns indicate this Court should hear this case to determine the role that airline safety plays in the lower court's decision to grant summary judgment.

The general lack of airline safety has now resulted in the death of thousands. While the evidence is not yet complete on the role that increased airline safety could have played in preventing these tragedies, this national focus provides an apt opportunity for the Court to decide the appropriate role of judge and jury in determining whether or not concerns about airline safety are being used to mask sex discrimination.

In this case, females, including the Petitioner, passed the Respondent's "objective pilot personality tests", which are used to eliminate those whose personality were not consistent with airline safety. Females passed the test at a far higher rate than did the male applicants. Emeott depo., pp. 24-25. Respondent then eliminated this objective test, and substituted a subjective test, which restored to the applicant field those who had failed the objective pilot personality tests. In granting the summary judgment, the district judge relied upon a purported need for airline safety in deferring to the airline's judgment of safety. With the nation being focused upon a need for airline safety, there can be no more appropriate time for this Court to determine whether a district judge, in granting a summary judgment, must "defer" to an airline's "special obligations to provide the highest possible degree of care". 49 U.S.C. App. § 421(B).

The personality type that the female internal pilot candidates possess as evidenced by their successful objective testing in 1995 is of crucial importance in the face of the new stresses and safety concerns facing all American flight crews in the wake of the terrorist attacks of September 11, 2001. Northwest Airlines, however, has male pilots currently flying passengers who failed their own preliminary objective safety tests for basic knowledge and personality type in 1995.[1]

CONCLUSION

The present time of concern for airline safety is an apt time for this Court to decide whether a district judge may defer to an airline's alleged safety concerns in considering a motion for summary judgment.

Respectfully submitted,

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[1] Northwest Airline's Senior Vice-President of Flight Operations, John Kern, told petitioner that Northwest's internal promotion pilot program was created to help get rid of the "good ol' boys club" that Kern knew existed in Northwest Airlines pilot department. (Petitioner Affidavit).